THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.20444 of 2006

18.12.2006

Between:

Vadkevu Kameswari Sivaji, S/o.Narasimha Murthy
And others

… Petitioners

AND

The District Collector, Visakhapatnam
And another

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.20444 of 2006

ORDER:

The petitioners herein allegedly obtained valid title under registered sale deeds executed in July and August 1990, and December 1991, by persons, who claim to be title-holders. The petitioners allege that before purchasing the lands comprised in survey Nos.22/1B, 9/1A, 1B, 1C and 17/1 of Mudasarlova village in Visakhapatnam District bearing various plot numbers, the petitioners made enquiries about the title of the vendors. They also allege that as per the certificate bearing C.No.10/88, dated 28.6.1998 issued by the Mandal Revenue Officer (MRO), Visakhapatnam (Rural) – the second respondent herein; to the effect that the land in these survey numbers is ryotwari patta land, as per the settlement fair adangal, and the land is not Forest/Government land. They further allege that the certificate issued by Visakhapatnam Urban Development Authority (VUDA) dated 04.1.1990 and the encumbrance certificate would show that the land is not Government land. However, on 14.8.2006, officials from the office of the respondents came to the plots with bulldozer to remove the fences and trees to level the land highhandedly without following due process of law. Therefore, they filed the present writ petition seeking a writ of Mandamus declaring the alleged action of the respondents as illegal and arbitrary, and for a consequential direction to the respondents not to dispossess the petitioners.

At the stage of admission itself, the MRO, Visakhapatnam (Rural), filed counter affidavit. The averments thereof are as follows. Mudasarloval village was taken over by the Government under the provisions of A.P. (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 (the Estates Act, for brevity) and survey and settlements were completed in 1958, determining an extent of

Acs.2980.16 out of Acs.3064.92 of the said village as Government land. The land admeasuring Acs.19.25 in survey No.9/1 is classified as Government (Poramboke) land. The land was purchased by Real Estate owners from Tribal people, who laid-out the plots and illegally sold them out as house plots. The Special Deputy Collector (Land Protection), Visakhapatnam, detected these illegal sales of Government lands and directed the MRO to initiate action under A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (the Act, for brevity). After the notice was published in Telugu Newspapers, Sub-Registrar was informed not to register the land. Notice was also sent to Yerraju Apparao, Kadarasi Nookalu, Gantupilli Kesavarao and Yengala Pentayya, the assignees. They submitted explanation and after considering the same, the MRO resumed the land to the Government on 31.12.1993. However, Jalmuri Appanna and 27 others filed applications under Section 11(a) of the Estates Act for ryotwari patta. The Settlement Officer and Joint Collector rejected the same. Aggrieved by the same, revision petition was filed before the Director of Settlements, who dismissed the same on 04.4.1995. Further appeal before the Commissioner, Survey & Settlements, was also dismissed on 08.7.1998. Aggrieved by the same, W.P.No.21730 of 1998 was filed before this Court, which was disposed of on 05.11.2002 directing the Government to consider the applications on merits. Yengali Apparao also filed a suit being O.S.No.64 of 1996 for permanent injunction, which was dismissed by the Court of the Junior Civil Judge, Bheemunipatnam. Yet again some of the applicants filed W.P.No.16198 of 2005 and the same was disposed of by this Court on 02.7.2005 giving liberty to the petitioners therein to approach the Joint Collector. The Collector conducted enquiry and passed final orders in S.R.No.11(pro) 1 to 28/2005
on 12.1.2006 rejecting the claims as not maintainable under the law. The same has already been challenged before the Commissioner of Appeals in Reference No.P1/229/06, dated 22.3.2006. Therefore, the petitioners have no right over the Government land and the certificate issued by the MRO relied on by the petitioner is fabricated and not genuine. The land is covered by mango thope and is in possession of the Government. So as to prevent further encroachment, the land was covered with fencing, cement polls and barbed wire, and was handed over to Central Reserve Police Force (CRPF) in the month of August 2006.

The petitioners also filed reply affidavit denying the counter averments. They allege that all of them purchased the land from the vendors who got it from their ancestors and at no point of time the petitioners were given notice. The allegation that the land is handed

over to CRPF in August 2006 is denied.

Learned Counsel for the petitioners vehemently contends that admittedly the proceedings before the Commissioner of Land Revenue against the orders of the Collector dated 12.1.2006 are pending and therefore till the same is finally decided the respondents cannot legitimately plead that it is a Government land. Secondly and alternatively it is submitted that after purchase of the land, the petitioners are continuously in possession of the land and, therefore, they cannot be evicted without due process of law. He also relief on the order of this Court in W.P.No.17515 of 2006 dated 11.9.2006 and submits that all the petitioners herein are similarly placed and, therefore, they are not entitled for protection for being dispossessed coercively.

Learned Assistant Government Pleader for Revenue (Assignment), after taking this Court through the elaborate counter affidavit, submits that right from 1959 after survey and settlement of Mudasarlova village, the land is registered as Government poramboke land and, therefore, the petitioners were never in possession of the land in 1990/1991. He also submits that the attempt made by the petitioners' vendors or persons claiming the land was already rejected by all the Authorities under the Estates Act and in the second round of litigation also the petitioners were unsuccessful. He submits that the land has already been handed over to CRPF and, therefore, this writ petition is filed without any basis.

There is a serious dispute regarding possession. On one hand it is the case of the petitioners that they are in possession and on 14.8.2006 officials from the office of the respondents came to the plots with bulldozer to remove the fences and trees to level the land. On the other hand, respondents contend that the land was never in possession of the petitioners and is always been with the Government. It is a question of fact as to who is in possession. Secondly, when the officials of the respondents allegedly tried to level the land with heavy machinery on 14.8.2006, petitioners filed the writ petition after lapse of more than one month on 27.9.2006. This itself would improbablise the case of the petitioners that they are in possession of the land. Thirdly, admittedly the claim for ryotwari patta in respect of the land in survey No.9 has been rejected by all the Authorities under the Estates Act and, therefore, much reliance cannot be placed on the registered sale deeds allegedly obtained by the petitioners. The order of this Court in W.P.No.17515 of 2006 has no application to the facts of this case, as in that case, learned Assistant Government Pleader admitted that the petitioners therein were not notified before allotting/handing over the land to CRPF. In this case,

learned Assistant Government Pleader submits that the land has already been handed over to CRPF. Having regard to the fact that the petitioners approached this Court with some delay, there is no reason to disbelieve the submission of the learned Assistant Government Pleader.

The writ petition is devoid of any merit and is accordingly dismissed. No costs.

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December 18, 2006. (**V.V.S.RAO,J**)

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